78-719

APPENDICES

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

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No. 1069

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REPRODUCTIVE SERVICES, INC., and
REPRODUCTIVE ASSOCIATES, P.A.,
Petitioners

V.

HONORABLE DEE BROWN WALKER,
District Judge of the 162nd Judicial District Court
Of Dallas County, Texas,
Respondent.

* * *

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

* * *

BRIEF FOR RESPONDENT IN OPPOSITION

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APPENDIX A

NO. 78-4488-I

Claudia E. Lott	)	In The District Court
vs.	)	Of Dallas County, Texas
Reproductive Services, Inc. and Reproductive Associates, P. A.	)	162nd Judicial District

APPEARANCES:

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EXCERPT OF PROCEEDINGS had In Chambers in the above numbered and entitled cause on the 22nd day of June, 1978, before THE HONORABLE DEE BROWN WALKER, Judge Presiding of the 162nd District Court of Dallas County, Texas, to-wit:

THE COURT: All right, we are now in chambers here in the presence of representatives of the Attorney General's office, Mr. Kelsoe, Mr. Ayres, Mr. Wheatley and Mr. Sayles. Okay.

MR. WHEATLEY: If it please the Court, Your

Honor, we have been presented a Petition of Intervention of State of Texas and also another document entitled Agreed Temporary Injunction which I am prepared to sign on behalf of my client, Reproductive Services, Inc., with the following understanding which I would like to have all counsel agree to on the record which will be as following:

I

That Items 1 through 20 so enumerated in the Agreed Temporary Injunction are not admissions by my client that any of the facts or conclusions recited in Paragraphs 1 through 20 have in fact occurred; and

II

That by the entry of the Agreed Temporary Injunction, my client will not be admitting that the actions have occurred, and that the Agreed Temporary Injunction will not be used as evidence that such acts have occurred in any proceeding in this cause; and

III

I understand from Mr. Kelsoe's announcement a moment ago that the Claudia Lott case as it relates to Claudia Lott won't proceed any further at this time, and of course, our client would fully cooperate with the Attorney General's investigation; and

IV

That any depositions taken in the cause would not be filed with the Clerk's office where they would be subject to public disclosure without motions being filed and due notice and hearing as to the disclosure of such depositions; and

V

That until the Texas Supreme Court rules on the pending Petitions for Writ of Mandamus, that my client would not be obligated to disclose the matters which we have complained of in the two Petitions for Writ of Mandamus.

THE COURT: Agreed, Mr. Flanary?

MR. SAYLES: On behalf of Reproductive Associates, P.A., I would ask for the same stipulation for executing the Agreed Order.

THE COURT: All right, how about it, Mr. Flanary, you agree?

MR. FLANARY: Judge, we will agree to the stipulation with this amendment to it: that I ask all counsel agree that no discovery will be had or taken in the case until the Supreme Court has ruled on the Writ of Mandamus now pending before it or on any other writs that may be filed by the Defendants in this case at a subsequent time; however, once a ruling has been had from the Supreme Court, discovery will be taken on all names of all patients of the Clinics throughout the State and all records on the nature of the conditions shown in those records would be discoverable by the State of Texas.

MR. WHEATLEY: That's agreeable to me if that's what the Supreme Court rules; in other words, we don't know whether they will put some limitation.

MR. FLANARY: Yes.

MR. WHEATLEY: We want to obviously comply with the Supreme Court's Order or any Federal Court's Order as to the nature and extent of any discovery.

MR. FLANARY: I want it clear once the Supreme Court of Texas has ruled and absent any intervention rulings the Supreme Court does allow the discovery of

those names that our stipulation is now not discovery that would be conducted by the State of Texas, that we would have access to all records, the nature of complaints, the nature of problems and the patients' names.

MR. WHEATLEY: With this one proviso: I would like to have a Court order at that time ordering me to disclose them so as to avoid any liability for invasion of privacy claims that patients may still wish to assert.

MR. FLANARY: I can't stipulate to that.

MR. WHEATLEY: In other words, I still don't want to voluntarily turn them over but I will if the Court orders me to do so, you see?

MR. FLANARY: As I understand it, we had an agreement that if the Supreme Court says that you have to, that the records are discoverable in effect.

THE COURT: There is already an Order because I have ordered them turned over, you see?

MR. WHEATLEY: You are right, okay.

THE COURT: You understand now, everybody understand?

MR. CHUMLEA: We are all in agreement in this.

MS. FRYE: Yes.

MR. KELSOE: Judge --

THE COURT: How about you, Kelsoe?

MR. KELSOE: We have not - we would want to have the same rights to discovery that the State has.

THE COURT: Well, you are going to have.

MR. KELSOE: Unless the Supreme Court restricts

in any fashion.

THE COURT: We have got to get the ruling on those cases that are down there, you see where they stand.

MR. KELSOE: In addition to that, Your Honor, we did file this morning a class framed petition asking we be allowed to proceed as a a class, and I want it understood that if we do agree to discontinue today, which I did say we would do, it is without prejudice to our rights to resume this proceeding should it become necessary to get discovery in conjunction with the State or separate from the State if it turns out that we seek additional discovery other than what the State wants.

MR. WHEATLEY: Well, I can't agree to that now.

THE COURT: That has nothing to do with the State's order.

MR. WHEATLEY: Not as I see it.

MR. AYRES: Here is what, Judge, is involved in the temporary injunction hearing right now. On our application, we filed a class action, and we think we are entitled to an injunction on it right now.

THE COURT: I am aware of all that. We have to get rid of the Supreme Court and let them decide, and I will go on with my lawsuit.

MR. KELSOE: As long as it is understood we are doing it without prejudice of the class.

THE COURT: Without prejudice to anybody.

On the trial of the case, on the damage suit case, I'm not going to permit this Agreed Temporary Injunction to be put before the jury. Does everybody understand?

MR. FLANARY: I think it goes without saying so and it is understood that subsequent to the entry of the

Agreed Temporary Injunction if there are violations found, that the State will and can and we certainly will seek contempt proceedings.

MR. WHEATLEY: And you would offer it in evidence.

MR. FLANARY: Offer it in evidence at that time in that contempt proceeding.

THE COURT: All right, that's something else.

APPENDIX B

IN THE SUPREME COURT OF TEXAS

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No. B-7680

.....

Reproductive Services, Inc.

v. Original Mandamus

Hon. Dee Brown Walker, Judge

[June 23, 1978]

Relator's motion for leave to file petition for writ of mandamus filed herein on June 16, 1978, having been duly considered, it is ordered that said motion for leave to file be, and hereby is, overruled.

It is further ordered that the Temporary Writ of Injunction issued by this Court on June 22, 1978 be, and hereby is, dissolved in the above numbered and entitled case.

It is further ordered that relator, Reproductive Services, Inc., pay all costs expended and incurred in this Court in this case.

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APPENDIX C

SUPREME COURT OF THE UNITED STATES

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No. A-1091

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Reproductive Services, Inc., Applicant,

v.

Dee Brown Walker, District Judge.

On Application to Stay an Order of the Supreme Court of Texas.

[July 17, 1978]

MR. JUSTICE BRENNAN.

I have before me an application[1] to stay an order of the Supreme Court of Texas, which denied applicant's motion for a writ of mandamus directed to respondent. The questions at issue here arise in a suit brought by Claudia E. Lott against applicant, which in essence charged applicant with medical malpractice in performing an abortion on Mrs. Lott. The complaint further charged applicant with violating the Texas Deceptive Trade Practices-Consumer Protection Act, Texas Bus. & Comm. Code Ann. §17.41 *et seq.* (Supp. 1977), in that applicant misrepresented the quality of care it was prepared to provide and failed to disclose material information regarding the risks involved in procedures used at applicant's abortion clinics. The State of Texas was allowed to intervene in this action

[1]This application was originally presented to Mr. Justice Powell, as Circuit Justice and, in his absence, was referred to Mr. Justice Rehnquist, who denied the application.

pursuant to the Deceptive Practices Act. Mrs. Lott and the State of Texas are the true parties in interest here.

Mrs. Lott caused a subpoena *duces tecum* to be issued against applicant. This subpoena sought the medical records of five named patients at applicant's clinics and also sought the medical records of any other patient who had any major or serious complications arising from an abortion at applicant's clinics or who had received certain medications. Applicant sought to quash this subpoena on the ground of invasion of its patients' privacy. This motion was granted in part by the respondent trial judge, who ruled that the records must be turned over, but that patient names could be deleted. Applicant sought mandamus in the Supreme Court of Texas to overturn this order. Subsequently counsel for applicant, Mrs. Lott, and the State of Texas entered a consent order and temporary injunction in which applicant agreed that on determination of applicant's petition for mandamus the State could take discovery "on all names of all patients of [applicant's] clinics throughout the State and all records on the nature of the conditions shown in those records."

The question sought to be raised by applicant—whether the names of abortion patients can be obtained by discovery for use in a civil suit against a person or clinic performing abortions where, as here, the parties have not agreed to a protective order to ensure the privacy of those patients—is a serious one. If this question were in fact presented by this case, I am of the view that four Members of this Court would vote to grant certiorari to hear it.[2] However, this issue is not presented here. First, the order of the trial court challenged by applicant's petition for mandamus did in

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[2]Applicant has styled his application as one for a stay pending petition for mandamus, but the appropriate avenue of relief would be by certiorari and I so read the papers.

fact provide that the names of applicant's patients could be deleted. Second, the State of Texas has represented in its response in this Court that it is prepared to enter into a protective order which will ensure the privacy of all patients at applicant's clinics. In light of the representations of the State of Texas, there is no irreparable injury to any patient's privacy interests which would justify a stay of the order of the Supreme Court of Texas.

Therefore, on express condition that the parties agree to a protective order ensuring the privacy of patients at applicant's clinics, the stay I entered on July 10, 1978, in these proceedings is hereby dissolved. If such a protective order is not entered, applicant may resubmit a further stay application.

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APPENDIX D

SUPREME COURT OF THE UNITED STATES

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No. A-1091

.....

Reproductive Services, Inc.,
Applicant,

v.

Dee Brown Walker, District Judge.

On Renewed Application to Stay an Order of the Supreme Court of Texas

[August 21, 1978]

MR. JUSTICE BRENNAN.

On July 17, 1978, in a chambers opinion, I stated that "on express condition that the parties agree to a protective order ensuring the privacy of patients at applicant's clinics, the stay I entered on July 10, 1978, in these proceedings is hereby dissolved. If such a protective order is not entered, applicant may resubmit a further stay application."

On August 14, 1978, applicant renewed its application, filing therewith a copy of an order entered August 1, 1978, by respondent, which they alleged did not constitute "such a protective order." Upon examination of said order of August 1, 1978, it is my view that said order does not constitute "such a protective order." Accordingly, the "express condition" upon which my stay entered on July 10, 1978, was to be dissolved not having been satisfied, said stay of July 10, 1978, is continued in effect pending the timely filing of a petition for certiorari.

Should said petition for writ of certiorari be denied, the stay of July 10, 1978, is to terminate automatically. In the event said petition for writ of certiorari is granted, the stay of July 10, 1978, is to continue in effect pending the issuance of the mandate of this Court.

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APPENDIX E

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NO. 78-4488-I

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Claudia E. Lott	In The District Court Of
v.	Dallas County, Texas
Reproductive Services, Inc. and Reproductive Associates, P.A.	162nd Judicial District

[APPEARANCES DELETED]

PROCEEDINGS had in open court in the above numbered and entitled cause beginning on the 19th day of June, A. D. 1978, before the HONORABLE DEE BROWN WALKER, Presiding Judge of the 162nd Judicial District Court of Dallas County, Texas, to wit:

PROCEEDINGS IN PART

MR. AYRES: All, right, sir, now Dr. Gardner, you have indicated in your testimony that what was being done at Reproductive Services, Inc. at least in part was an abortion procedure, is that right?

DR. GARDNER: Yes, sir.

MR. AYRES: What contact in the regular operation of business of Reproductive Services did you have with patients generally speaking?

DR. GARDNER: Occasionally I examined the patient prior to the time she was placed into the procedure room, but usually my first contact with the patient was on the procedure table when I did a bimanual examination and introduced myself.

MR. AYRES: So in the normal course of events of the operation of this facility, you as the physician first saw the patient in an ordinary case when she actually came in the treatment room to have the abortion performed, is that right?

DR. GARDNER: Yes, sir.

* * *

MR. AYRES: So for the Court's benefit, the sequence of events of Ms. Lott's case was that after she came into the examination room and you saw her, she was brought into the treatment room by the counselor and the counselor was actually present there and in charge of maintaining an antiseptic area there for you to operate or cleansing the area so that it would be antiseptic for you to operate on this patient, is that right?

DR. GARDNER: Yes.

MR. AYRES: And did this person have any license whatsoever to assist you as a nurse or as a physician's assistant or anything like that?

DR. GARDNER: Not that I know of.

* * *

MR. AYRES: All right, sir, frequently is it true that the recovery room is not attended by a nurse or a physician, but maybe attended by someone else?

DR. GARDNER: Frequently.

MR. AYRES: All right, sir, and in your experience, sir, is it frequently true that the individuals who attend the patients in the recovery room is not a person licensed to practice either medicine or nursing to the best of your knowledge?

DR. GARDNER: That's sometimes true.

MR. AYRES: All right, sir, now when you are talking about a recovery room, Doctor, remember that the Court has never seen the inside of that place or as it was at this time, could you describe to the Judge, please, sir, what the quote "recovery room" unquote, looks like?

DR. GARDNER: It's a large room approximately thirty feet long, twelve feet maybe wide, at that time there were four day beds, four beds in one end of the recovery room. There were two couches, I believe, two or three chairs.

MR. AYRES: These are the overstuffed lounge chair type things?

DR. GARDNER: Yes, sir.

MR. AYRES: Okay.

DR. GARDNER: Some end tables and lamps.

MR. AYRES: I think that probably answers my question. Basically, Doctor, then when you describe their recovery room, in the setting of Reproductive Services, it's nothing like what you would see in a hospital recovery room?

DR. GARDNER: No, sir.

MR. AYRES: All right, you have got four day beds and a couple of couches and end tables and basically it looks more like a den or I should say an inexpensive den or modest den in a residence, would that be right?

DR. GARDNER: Yes, sir.

MR. AYRES: All right, have carpet on the floor?

DR. GARDNER: Yes, sir.

MR. AYRES: No attempt to preserve an aseptic or antiseptic environment there?

DR. GARDNER: No, sir.

* * *

MR. AYRES: Do you know how far between times it was from one scheduled abortion to the next?

DR. GARDNER: No, sir.

MR. AYRES: Could you give us some idea?

DR. GARDNER: I really can't.

MR. AYRES: Well, tell me what the average length of time was from the time you finished one abortion until you took up another on an average day?

DR. GARDNER: If things were going very smoothly, a minute.

MR. AYRES: A minute?

DR. GARDNER: A minute and a half.

* * *

MR. AYRES: In addition to what else you have told us, you also had to rescrub, didn't you?

DR. GARDNER: No, sir, we don't scrub before these procedures. We use sterile gloves, but we don't scrub.

MR. AYRES: You don't wash your hands between these abortion procedures?

DR. GARDNER: Yes, sir.

MR. AYRES: You do not?

DR. GARDNER: We do not.

MR. AYRES: Do you know of any major medical facility in Dallas that permits perfomance of multiple

surgery without scrubbing between surgery whether sterile gloves are used or not?

DR. GARDNER: No, sir.

* * *

MR. AYRES: You mentioned a reaction, a systemic reaction to Xylocaine as a possible complication, that was one of the reasons that you had the emergency systems for, do you remember that?

DR. GARDNER: Yes, sir.

MR. AYRES: What is the most typical complication, life threatening complication of that sort of reaction?

I should restrict my question to cardiac function, I'm sorry, what sort of dysrhythmia or arhythmia does that frequently cause?

DR. GARDNER: It frequently causes slow down of the heart rate.

MR. AYRES: Bradycardia?

DR. GARDNER: Yes, sir.

MR. AYRES: All right, sir, and it also can cause dysrhythmia or arhythmia, can it not, in addition to bradycardia?

DR. GARDNER: Yes, sir.

MR. AYRES: All right, sir, now there is something missing here, isn't there, Doctor, to diagnose that condition, what is it?

DR. GARDNER: Electrocardiogram.

* * *

MR. AYRES: Right. You can determine if the pulse is too slow or it's too fast or if it is irregular or it's erratic, but you can't determine what is causing it, can you, unless you have an EKG so that you can look at the waves, right?

DR. GARDNER: That's true.

MR. AYRES: So what good is it to have these drugs unless you have a complete cardiac arrest in the patient, you couldn't give a patient calcium carbonate because you don't know if you want to stabilize the beat or that rhythm or not, do you?

DR. GARDNER: That's right.

MR. AYRES: You don't have a scope, do you?

DR. GARDNER: Not an electrocardiogram, no.

* * *

MR. AYRES: All right, sir, how would you diagnose PVC's in a patient having a systemic reaction to Zylocaine (sic) without an EKG?

DR. GARDNER: You really can't diagnose it.

MR. AYRES: Can't diagnose it, and if PVC's in a patient are untreated for a long enough period of time, what's going to happen?

DR. GARDNER: They can't fibrillate.

MR. AYRES: And when they fibrillate, what happens?

DR. GARDNER: Generally they may die or --

MR. AYRES: That's right, they do die, don't they?

DR. GARDNER: Sometimes.

MR. AYRES: Which brings me to my next question, what else is missing if you want to treat somebody for life threatening complications such as fibrillation, a defibrillator, did you have a defibrillator over there?

DR. GARDNER: No, sir.

MR. AYRES: So you couldn't diagnose anything except a complete cardiac arrest and you couldn't treat anything that had to do with ventricular fibrillation?

DR. GARDNER: Not unless you did external chest massage.

MR. AYRES: Yes, sir. An external chest massage is not going to help you one ounce with somebody in deep fib, is it?

DR. GARDNER: It may help you buy a little time.

MR. AYRES: Sixty seconds, a minute, until they arrest?

DR. GARDNER: Yeah.

* * *

MR. AYRES: In addition to the Xylocaine reaction which we discussed, another complication frequently associated with abortion is hemorrhage, is it not?

DR. GARDNER: Yes, sir.

MR. AYRES: What is the chief life threatening complication of hemorrhage in terms of physiological function?

DR. GARDNER: Hypovolemia.

* * *

MR. AYRES: Okay, that gives rise to a condition called hypovolemic shock, doesn't it.

DR. GARDNER: Yes, sir.

* * *

MR. AYRES: Now if hypovolemic shock continues untreated or worsens, what happens to the patient's heart?

DR. GARDNER: They get anoxic.

MR. AYRES: And again you can get dysrhythmia and arhythmia.

DR. GARDNER: Yes, sir.

MR. AYRES: Okay, how did you diagnose dysrhythmia and arhythmia in a patient with hypovolemic shock at Reproductive Services?

DR. GARDNER: By feeling the pulse.

MR. AYRES: Okay, other than by feeling the pulse, let's say that you know that you have got tachycardia, the patient's pulse is just racing, but you want to know what you can do medically to treat that patient, you want to know if they have got acidosis, if they have got a specific cardiac arhythmia or dysrhythmia, how do you find that out?

DR. GARDNER: You go to a hospital.

MR. AYRES: Go to a hospital. How much whole blood did they have at Reproductive Services, Inc., how much did they keep on hand there?

DR. GARDNER: None.

MR. AYRES: How much plasma?

DR. AYRES: None.

* * *

MR. AYRES: Okay, now if you have got somebody with a low hematocrit, of a lower than, what is the percentage now, thirty something, thirty-five, what does it get to the point that fluid replacement unaccompanied by oxygen bearing ability becomes material, what is the number?

DR. GARDNER: You worry if it is less than thirty.

MR. AYRES: All right, now if you have a patient with a hematocrit of less than thirty and they are in hypovolemic shock, the fluid of choice is Ringer's lactate but when they have hematocrit of less than thirty, that doesn't replace the blood's ability to bear oxygen, does it?

DR. GARDNER: No, sir.

MR. AYRES: So you have got to have whole blood, right?

DR. GARDNER: It carries more oxygen.

MR. AYRES: All right, sir, and if you don't have whole blood and you keep giving the Ringer's latate (sic) and they keep bleeding, what happens?

DR. GARDNER: You don't have any red cells.

MR. AYRES: So what happens?

DR. GARDNER: They die.

* * *

MR. AYRES: Now after you assessed the situation and found that Ms. Lott was critically ill and in need of emergency care and treatment, what did you do?

DR. GARDNER: Asked to call an ambulance and to call Mr. Watkins back.

* * *

MR. AYRES: What was the purpose of calling the ambulance?

DR. GARDNER: To take the patient to the hospital.

MR. AYRES: All right, what was the purpose of calling Dr. Watkins?

DR. GARDNER: To request permission to take her to St. Paul Hospital.

MR. AYRES: Why did you want to take her to St. Paul's Hospital?

DR. GARDNER: It was close.

MR. AYRES: That wasn't the only reason, was it?

DR. GARDNER: That was the major reason. The major reason was that it was close.

MR. AYRES: And the reason you had to call Dr. Watkins was because you didn't have privileges at St. Paul, isn't that right?

DR. GARDNER: Yeah, I don't have privileges.

* * *

MR. AYRES: And how far away was that from where you were?

DR. GARDNER: Possibly half a mile.

MR. AYRES: Half a mile. This lady is bleeding to death, she's in need of immediate care and attention, you assess the situation and call an ambulance and while the ambulance is coming, you call Dr. Watkins to get permission to take her to St. Paul, right?

DR. GARDNER: Yes.

MR. AYRES: What did Dr. Watkins say?

DR. GARDNER: I didn't talk to him, but he indicated that he would rather I took her to Methodist where I was on the staff.

MR. AYRES: You didn't talk to Dr. Watkins?

DR. GARDNER: No.

MR. AYRES: Well, how did you get the information that he didn't want her taken to St. Paul?

DR. GARDNER: Ms. Rucker talked to Dr. Watkins.

MR. AYRES: I see. So you had Ms. Rucker call the ambulance and call Dr. Watkins while you stayed with the patient?

DR. GARDNER: While I stayed with the patient and I ran an hematocrit, both of which we were doing at the time, we were checking the patient and running an hematocrit and making phone calls all at the same time or rechecking the hematocrit, I'm sorry.

MR. AYRES: So, the circumstances were that given this situation, Dr. Watkins who was in the staff there, I guess you could say the staff there at Reproductive Services, Inc., did not want the patient taken to St. Paul Hospital less than a half a mile away?

DR. GARDNER: I guess you can say that.

MR. AYRES: Rather he wanted you to take her to the hospital where you had staff privileges, Methodist Hospital, which was how many miles away?

DR. GARDNER: I can't tell you exactly how many miles away it is.

MR. AYRES: It's a long way, isn't it?

DR. GARDNER: Yes, sir, it's --

MR. AYRES: In point of fact, isn't it true, Doctor that in order to get to Methodist Hospital from Hines and Maple, the most direct route to take would take you right by St. Paul Hospital and right by the front door or the side door if you went down Medical Center Drive, by Parkland Hospital, you would drive right by both of them to go, the fastest route is Stemmons Freeway, isn't that true?

DR. GARDNER: You would drive by both of them.

* * *

MR. AYRES: Had anyone ever told you or implied to you that in the event of a complication at this clinic, you weren't to take these patients to Parkland Hospital?

DR. GARDNER: No one had ever told me I was not to take a patient to Parkland Hospital. It may have been implied or at least I had inferred that.

* * *

MR. AYRES: Can you tell me how much time elapsed from the time that you called the ambulance or requested that it be called until the ambulance in fact arrived?

DR. GARDNER: As near as I can recollect approximately forty minutes.

* * *

MR. AYRES: Okay, you are a physician dealing with a woman who is bleeding to death, in serious jeopardy of her life and you wait forty minutes for an ambulance to get there.

At some point in time you must begin to wonder where the ambulance is.

DR. GARDNER: That's right.

MR. AYRES: Knowing the facilities that we have in the City of Dallas for the care of emergency cases like this, you must have wondered where the ambulance was?

DR. GARDNER: Yes, sir.

MR. AYRES: Did you make inquiry about it?

DR. GARDNER: I think so. I believe I did.

MR. AYRES: And this would have been to Ms. Rucker?

DR. GARDNER: If I didn't make inquiry about it, I certainly wondered out loud where the ambulance was.

MR. AYRES: It is an inordinately long period of time for somebody critically ill to wait for transportation, isn't it?

DR. GARDNER: Yes, sir, and it was a long period of time for us to wait.

* * *

MR. AYRES: All right, now when you made inquiry of Ms. Rucker about where the ambulance was, were you told why it was taking the fire department so long to get there?

DR. GARDNER: I don't recall. I think that I was told that it was American Ambulance Service, and I don't remember whether there was a reason given for why it was taking so long.

MR. AYRES: Well, did it strike you peculiar that Ms. Rucker told you that American Ambulance Service had been called for this patient when you knew that Dallas Fire Department paramedics were available to you out of the station right down the street there at Cedar Springs, just right off the street down there, you

have been by it, I know, didn't it strike you peculiar that those paramedics on that ambulance weren't called?

DR. GARDNER: Yes, sir.

MR. AYRES: What did you do about it?

DR. GARDNER: I waited.

* * *

MR. AYRES: So essentially the circumstances as I understand them were you have already told me that you felt like Ms. Rucker had authority over you, the circumstances were you had a critically ill patient who Dr. Watkins didn't want taken to St. Paul Hospital, which was half a mile away and who Ms. Rucker didn't want the fire department to transport.

DR. GARDNER: I don't know if it was that she didn't want the fire department to transport them or if it was just the routine to call American Ambulance Service.

* * *

MR. AYRES: I don't understand something, Doctor, I see a woman here who is bleeding to death, whose hematocrit is twenty-two, who has falling blood pressure, who tilts, who gives every sign that she is going to die and yet there is no provision made to transport her by emergency means, tell me why, why?

DR. GARDNER: The only reason I can give you is that we may not have been familiar with the fact that American Ambulance Service does not respond as quickly as the fire department.

MR. AYRES: Would it be fair to say that you in this particular at least had absolutely no idea what emergency medical service facilities were available to treat people who were seriously ill?

DR. GARDNER: I had no idea what emergency facilities American Service had available.

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MR. AYRES: When you had the case with Ms. Jackson, Louchrisser Jackson, the same clinic, same facilities, virtually the same circumstances in some respects, same complications, same emergency situation, again Reproductive Services, Inc. called American Ambulance Service to transport the patient, didn't they?

DR. GARDNER: Yes, sir.

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MR. AYRES: Well, Dr. Gardner, if this lady came into your, came in this facility here and she was a married woman, she had a child and she wanted to have other children --

DR. GARDNER: Yes, sir.

MR. AYRES: --happily married, no problems, she wanted the child but she was deathly afraid that the child might be deformed --

DR. GARDNER: Yes, sir.

MR. AYRES: -- she is not a highly educated woman, she just has a rudimentary understanding of these things, and the reason that she felt that the child would be deformed was that she had pain medication and surgery and general anesthesia when she was pregnant and she didn't know she was pregnant, --

DR. GARDNER: Yes, sir.

MR. AYRES: -- you wouldn't have aborted that woman's baby now, would you, as a doctor, you would not, would you, if that was the reason for the abortion,

you wouldn't have done it, would you?

DR. GARDNER: If that was the only reason for the abortion, then I would need more information before I made a decision as to whether it should be or should not be.

MR. AYRES: So the answer to my question is if you had had that information, if you had known the true facts as to Claudia Lott's condition, you would not have aborted her in that room on that occasion, would you?

DR. GARDNER: No, sir, I would not.

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BY MR. KELSOE:

MR. KELSOE: State your name for the Court, please.

MS. MCNEELY: Jerry McNeely.

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MR. KELSOE: And in what capacity are you presently employed by Reproductive Services?

MS. MCNEELY: Clinic Director.

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MR. KELSOE: All right, now if I recall your testimony correctly yesterday, you say that you do have two R.N.'s employed, but basically only one of them is normally on duty at a single time, is that correct?

MS. MCNEELY: Usually, yes, sir.

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MR. KELSOE: All right, does this L.V.N. have a license as a Licensed Vocation Nurse?

MS. MCNEELY: Yes.

MR. KELSOE: All right, what is her name?

MS. MCNEELY: Romana Rodriguez.

MR. KELSOE: Romana Rodriguez. All right, now you have got the recovery room, and you call her a nurse but we have got that in quotes because you say she is not actually a nurse, is that correct?

MS. MCNEELY: She was trained in another country before she came to work with us. She went to SMU and asked them to evaluate her training from the country she was in and give her papers so that we could see the equivalency for her here.

MR. KELSOE: Let me ask you this, does SMU have a School of Nursing?

MS. MCNEELY: No.

MR. KELSOE: Ma'am?

MS. MCNEELY: No, they do not.

MR. KELSOE: They never have had, have they?

MS. MCNEELY: I don't know.

MR. KELSOE: Since you have been here, SMU doesn't have a School of Nursing.

MS. MCNEELY: Not that I know of.

MR. KELSOE: So this woman you say was trained in another country?

MS. MCNEELY: Yes.

MR. KELSOE: Where was that?

MS. MCNEELY: Belgium.

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MR. KELSOE: All right, and she doesn't have any license?

MS. MCNEELY: She does not have one from the State of Texas.

MR. KELSOE: And what is her name? Does she have a license from anybody?

MS. MCNEELY: No.

MR. KELSOE: Okay, what is her name?

MS. MCNEELY: Renee Pritchard.

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MR. KELSOE: All right, now the next one you called a medical assistant, but I believe you told us it is not really an assistant, that's just a title because they don't have any license anyway in the State of Texas, is that correct?

MS. MCNEELY: Her training is equivalent to an L.V.N. I'm not sure if she is licensed in the State of Texas. That question you could ask of her.

MR. KELSOE: Well, you told me yesterday she didn't have any license, didn't you?

MS. MCNEELY: I may have.

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MR. KELSOE: Now the next one you designated as an operating room technician but again you said that she doesn't have any license, is that correct?

MS. MCNEELY: That's correct.

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MR. KELSOE: Oh, I see. Well, now Mrs. McNeely,

your R.N. is doing, you have just got one of those on duty, she is doing your physicals, isn't she?

MS. MCNEELY: Not necessarily.

MR. KELSOE: Well, who is doing the physicals then?

MS. MCNEELY: The L.V.N. and the medical assistant both do the palpation, too.

MR. KELSOE: Oh, I see. So you are letting a Licensed Vocation Nurse that has no medical training -- tell us what a Licensed Vocation Nurse is supposed to do as you understand it, please, ma'am?

MS. MCNEELY: In our particular clinic?

MR. KELSOE: No ma'am. Under the statute of the State of Texas, what authority?

MS. MCNEELY: I am not aware of that.

MR. KELSOE: You don't know?

MS. MCNEELY: No, I do not know?

MR. KELSOE: You made no effort to find out?

MS. MCNEELY: No.

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MR. KELSOE: And the L.V.N. then is actually doing physicals and palpation with reference to the size of the fetus, is that correct?

MS. MCNEELY: She is doing palpations, yes.

MR. KELSOE: And she is making the determination as to the size of the fetus and as to how far along the lady is in her pregnancy?

MS. MCNEELY: Yes.

MR. KELSOE: Okay.

MS. MCNEELY: At that point.

MR. KELSOE: Okay, and the medical technician is also, medical assistant is also doing that?

MS. MCNEELY: Yes, sir, that's correct.

MR. KELSOE: And she doesn't have any type of license from the State of Texas, does she?

MS. MCNEELY: Not that I know of.

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MR. KELSOE: All right, now give us the names of the five counselors.

MS. MCNEELY: Judy McMill.

MR. KELSOE: Judy McMill.

MS. MCNEELY: Do you want her degree?

MR. KELSOE: Yes.

MS. MCNEELY: She has a Bachelor's in Sociology from SMU.

MR. KELSOE: All right.

MS. MCNEELY: Doreen Nash.

MR. KELSOE: Doreen Nash. What type of degree does she have?

MS. MCNEELY: A Bachelor's Degree in Health Education and I believe it was from the Univesity of Connecticut. I'm not sure.

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MR. KELSOE: Give me the name of the next

counselor, please, ma'am?

MS. MCNEELY: Pat Stahl, S-t-a-h-l. She has a Bachelor's in languages.

MR. KELSOE: A Bachelor's in languages?

MS. MCNEELY: From Cornell.

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MR. KELSOE: What is the name of the next counselor, please.

MS. MCNEELY: Patty Goodfriend.

MR. KELSOE: Patty Goodfriend?

MS. MCNEELY: Yes.

MR. KELSOE: What type of degree does Patty Goodfriend have, please, ma'am?

MS. MCNEELY: It's from the University of Texas I believe in Sociology. It could be psychology.

MR. KELSOE: All right, I believe we are short one, one more.

MS. MCNEELY: Hope Zararie.

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MR. KELSOE: What type of degree if any does she have, please, ma'am?

MS. MCNEELY: She has not completed her degree.

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MR. KELSOE: Okay, now you told us yesterday that you have two part time counselors. What are their names, please, ma'am?

MS. MCNEELY: One is Esther T-i-e-j-i-e-r-i-n-a, Tiejierina.

MR. KELSOE: What type of degree does she have, please, ma'am?

MS. MCNEELY: She does not have a degree.

MR. KELSOE: No degree. Okay, and what is the second part time counselor?

MS. MCNEELY: Nettie Cox.

MR. KELSOE: Who?

MS. MCNEELY: Nettie Cox. C-o-x.

MR. KELSOE: All right.

MS. MCNEELY: She has a Bachelor's but I do not remember what it is in.

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MR. KELSOE: Mrs. McNeely, what are the instructions that you have given with reference to what ambulance service to use in case of an emergency?

MS. MCNEELY: I have left no instructions.

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MR. KELSOE: What are the emergency instructions then with reference to calling an ambulance?

MS. MCNEELY: At this time?

MR. KELSOE: Yes, ma'am.

MS. MCNEELY: We have the new ambulance number posted in the clinic.

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MR. KELSOE: None. Okay, before April 1st, 1978, what was your policy with reference to calling ambulances?

MS. MCNEELY: We really did not have a policy.

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MR. KELSOE: And so are you telling this Court that you don't know what the policy was with reference to emergency ambulances from 1974 to April 1st, 1978, is that your sworn testimony to this Court?

MS. MCNEELY: Yes.

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